

DIVISION II

**ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE**

CA05-1347

May 24, 2006

FLOYD SAVAGE

APPELLANT

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. E708648]

V.

AFFIRMED

CITY OF LITTLE ROCK

APPELLEE

The appellant in this workers' compensation case sustained a compensable injury in 1997 while attempting to make an arrest in the course and scope of his employment as a Little Rock Police Officer. As a result, he sustained a lumbar-disc injury and a sacroiliac-joint injury. He did not have surgery for his lumbar disc injury, but a sacroiliac joint fusion was performed in June 2001. He filed a claim requesting that the Arkansas Workers' Compensation Commission determine the appropriate impairment rating for his sacroiliac (SI) condition and contending that he was entitled to wage-loss benefits in addition to the permanent-impairment rating. After a hearing, the Commission denied the claim, finding that appellant failed to prove entitlement to benefits by a preponderance of the evidence. On appeal, appellant asserts that there is no substantial evidence to support the Commission's finding that he had no permanent impairment from his SI injury or the finding that appellant was not entitled to wage-loss benefits. We affirm.

When reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission, and we must uphold those findings unless there is no substantial evidence to support them. *Bates v. Frost Logging Co.*, 38 Ark. App. 36, 827 S.W.2d 664 (1992). In cases where a claim is denied because a claimant fails to show entitlement to compensation by a preponderance of the evidence, the substantial evidence standard of review requires that we affirm if a substantial basis for the denial of relief is displayed by the Commission's opinion. *Williams v. Arkansas Oak Flooring Co.*, 267 Ark. 810, 590 S.W.2d 328 (Ark. App. 1979).

A determination of the existence or extent of physical impairment must be supported by objective and measurable physical findings. Ark. Code Ann. § 11-9-704(c)(1)(B) (Repl. 2002). Pursuant to Ark. Code Ann. § 11-9-522(g)(1) (Repl. 2002), the Commission must adopt an impairment rating guide to be used in the assessment of anatomical impairment, and the Commission has adopted the AMA Guides to be used in this assessment. *See* Arkansas Workers' Compensation Commission Rule 34. The Commission is authorized to decide which portions of the medical evidence to credit and to translate this medical evidence into a finding of permanent impairment using the AMA Guides. *Avaya v. Bryant*, 82 Ark. App. 273, 105 S.W.3d 811 (2003). Here, the Commission based its finding that appellant failed to prove he suffered permanent impairment from his SI injury by noting that there was no medical testimony that he was impaired after surgery was performed but, to the contrary, appellant's treating physician opined that he could return to full duty soon afterward. The Commission also noted that the Guides adopted by the Commission contained no reference to a SI joint fusion as an impairment. We hold that this adequately supports the Commission's finding.

With regard to the wage-loss benefits, the Commission relied on appellant's 1999 testimony that he was physically able to perform any of the positions at the Police Department, and his 2002 testimony, following SI joint fusion, that his condition was much improved, "almost 100%," and that he was ready to return to work for appellee. The Commission determined that appellant could work and in fact had begun working until he began experiencing unrelated mini-strokes in February 2002, and that he had neither sought nor obtained any work after that time. On this record, we cannot say that the Commission erred in finding that appellant failed to prove entitlement to any wage-loss benefits resulting from his compensable injury.

Affirmed.

ROBBINS and BAKER, JJ., agree.